

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JAMES P. CHASSE, JR., et al.,)

Plaintiffs,)

v.)

CHRISTOPHER HUMPHREYS, et al.,)

Defendants.)

No. CV-07-189-HU

ORDER

HUBEL, Magistrate Judge:

On April 25, 2008, I heard argument on Plaintiffs' Sixth and Seventh Motions to Compel against the City Defendants (#272, #277). I ruled from the bench on many of the issues raised in the motions, and took other issues under advisement. See Minutes of Proceedings (dkt #319).

Some of the discovery in dispute in the motions to compel is relevant solely to plaintiffs' Monell claims. Because a motion to bifurcate the Monell claims is pending before Judge King, I took the issues related to that discovery under advisement. Other issues taken under advisement at the April 25, 2008 hearing were

1 not related solely to Monell claims but nonetheless, no ruling on
2 them was made at the hearing. This Order contains my rulings on
3 this second group of issues taken under advisement on April 25,
4 2008. Because Judge King has not yet decided the bifurcation
5 motion, this Order does not resolve the issues taken under
6 advisement pending such determination.

7 I. Plaintiffs' Sixth Motion to Compel against the City Defendants

8 A. LEDS Information

9 Plaintiffs seek certain information regarding requests made to
10 the "Law Enforcement Data System" or LEDS, for information
11 concerning Chasse, on September 17, 2006. Plaintiffs seek
12 documents identifying who requested the access to the LEDS
13 information, the operator who accessed the information, the
14 location of the terminal from which the access was sought, and the
15 information received in return from LEDS. Exh. A to Steenson Mar.
16 12, 2008 Declr. (RFP #137).

17 In the written briefing and at oral argument, the City
18 defendants explained that a contract with the State of Oregon
19 governs the City's use of LEDS, and that the City was likely unable
20 to produce the requested information to plaintiffs without
21 violating that contract. I asked both plaintiffs and the City
22 defendants to inquire of the State about providing this
23 information.

24 In response to this request, City defendants' counsel informed
25 the Court via email on May 9, 2008, that his office had contacted
26 the appropriate person at the Oregon State Police who in turn had
27 sought advice from a State of Oregon Assistant Attorney General.
28 The opinion of the Attorney General's Office is that the Oregon

1 State Police is unable to authorize any other agency that receives
2 LEDS data to release it in any instance, including in civil
3 litigation. Thus, he opined that the City could not release LEDS
4 information, including any LEDS codes.

5 Based on the City's response regarding its contractual
6 obligations, in reliance on the opinion of the Attorney General's
7 office, I deny the motion to compel as to the LEDS information. I
8 direct plaintiffs to obtain the information directly from the State
9 of Oregon, via a subpoena if necessary.

10 B. Depositions of Portland Police Bureau (PPB) Personnel
11 Plaintiffs seek to depose PPB Public Information Officer Brian
12 Schmautz and PPB Detective George Burke regarding an October 17,
13 2006 "Fact Sheet" the PPB published regarding the Chasse
14 investigation. Apparently, Schmautz and Burke were involved in the
15 preparation of the "Fact Sheet." Exh. C to Steenson's Mar. 12,
16 2008 Declr.

17 Plaintiffs contend that depositions of Schmautz and Burke are
18 reasonably calculated to lead to the discovery of admissible
19 evidence, quite possibly in the form of admissions against party
20 opponents, regarding their roles in the publication of the "Fact
21 Sheet," which plaintiffs state is inaccurate in several material
22 respects. The City defendants respond that plaintiffs have not set
23 forth what new information might be obtained by deposing Schmautz
24 and Burke. They argue that these depositions would be duplicative
25 of information already obtained through interrogatory responses.

26 I deny the motion to compel the depositions. First,
27 approximately fifty-five depositions were scheduled for January
28 through March 2008. Exh. A to Steenson Feb. 20, 2008 Declr.

1 (November 6, 2007 letter to Steenson from City defendants' counsel
2 confirming deposition schedule). Many of these witnesses are PPB
3 personnel. At the March 14, 2008 discovery hearing, I also allowed
4 depositions of additional AMR witnesses. Thus, plaintiffs have
5 already taken an overwhelming number of depositions in the case.

6 Second, it is obvious from the November 6, 2007 letter to
7 Steenson outlining the deposition schedule, that plaintiffs have
8 taken depositions of witnesses covering a wide-range of issues.
9 Thus, to date, discovery has been quite broad.

10 Third, plaintiffs concede that these witnesses are not fact
11 witnesses. They argue, however, that the depositions of these
12 witnesses could lead to the discovery of admissible evidence
13 because the depositions could reveal the source of the inaccuracies
14 in the Fact Sheet, and thus, might lead to an admission that is
15 helpful to plaintiffs, or to impeachment evidence. However, any
16 such impeachment is quite likely to be on a collateral matter. I
17 conclude that the possibility that these depositions could produce
18 admissible evidence is remote and that the evidentiary value is
19 marginal, especially when contrasted with the burdens imposed by
20 conducting these depositions.

21 II. Plaintiffs' Seventh Motion to Compel against the City
22 Defendants

23 A. Henderson's Statements re: Humphrey's Activity Level

24 The following statements from PPB Commander Donna Henderson
25 were quoted in the October 27, 2006 edition of The Oregonian:
26 "[Humphreys] would be the uniform cover that would actually make
27 the arrest so he has a lot of hands-on contact with people. His
28 activity level looks a little different because of that." Exh. A

1 to Steenson Mar. 19, 2008 Declr. Plaintiffs seek documents
2 describing, evidencing, or relating to these statements.

3 I deny the motion. This request would conceivably require the
4 production of every police report in the entire department for an
5 unspecified period of time, and at a minimum, would require
6 production of all transit division police reports for an uncertain
7 period of time. I can conceive of no other documents which would
8 support Henderson's statement regarding how many times Humphreys
9 was the "uniform cover" actually making an arrest and how his
10 "activity level" compares with other officers' activity levels.

11 The burden of such a production outweighs any probative value,
12 whether the putative evidentiary value is gauged in relation to an
13 individual liability claim or a Monell claim. For either type of
14 claim, the evidentiary value, or the likelihood of responsive
15 documents leading to admissible evidence, is remote. Thus, whether
16 the Monell claims are bifurcated or not, the motion is denied.

17 B. Henderson's Statements re: Drug Arrests

18 Henderson also told The Oregonian that her unit of twenty-
19 eight officers who patrol the MAX light rail trains and bus lines,
20 make eighteen to twenty percent of the drug arrests in the Portland
21 area. Exh. A to Steenson Mar. 19, 2008 Declr. This statement also
22 appeared in the October 27, 2006 edition of The Oregonian. Id.

23 For the reasons articulated in the previous section, I deny
24 this motion. Again, the request would require production of all
25 police reports regarding drug arrests, for a uncertain period of
26 time. The burden of production outweighs the minimal evidentiary
27 value that these documents might possess. Moreover, as in the
28 previous section, regardless of whether the Monell claims are

1 bifurcated, the motion is denied.

2 IT IS SO ORDERED.

3 Dated this 14th day of May, 2008.

4
5
6 /s/ Dennis James Hubel
7 Dennis James Hubel
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28